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8  
9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11 SAN JOSE DIVISION

12 SECURITIES AND EXCHANGE  
COMMISSION,

13 Plaintiff,

14 vs.

15 JOHN F. GIFFORD,

16 Defendant.

CV 07 Case No.

6121

[PROPOSED] FINAL JUDGMENT AS TO  
DEFENDANT JOHN F. GIFFORD

18 [PROPOSED] FINAL JUDGMENT AS TO DEFENDANT JOHN F. GIFFORD

19 The Securities and Exchange Commission having filed a Complaint and Defendant  
20 John F. Gifford having entered a general appearance; consented to the Court's jurisdiction over  
21 Defendant and the subject matter of this action; consented to entry of this Final Judgment without  
22 admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings  
23 of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

24 I.

25 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and  
26 Defendant's agents, servants, employees, attorneys, and all persons in active concert or  
27 participation with them who receive actual notice of this Final Judgment by personal service or  
28 otherwise are permanently restrained and enjoined from violating Section 17(a)(3) of the

[PROPOSED] FINAL JUDGMENT AS TO JOHN  
F. GIFFORD

1 Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)(3)] in the offer or sale of any  
 2 security by the use of any means or instruments of transportation or communication in interstate  
 3 commerce or by use of the mails, directly or indirectly to engage in any transaction, practice, or  
 4 course of business which operates or would operate as a fraud or deceit upon the purchaser.

5 II.

6 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and  
 7 Defendant's agents, servants, employees, attorneys, and all persons in active concert or  
 8 participation with any of them, who receive actual notice of this Final Judgment, by personal  
 9 service or otherwise, and each of them, are permanently enjoined and restrained from aiding and  
 10 abetting any violation of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules  
 11 12b-20, 13a-1, 13a-11, and 13a-13 promulgated thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1,  
 12 240.13a-11, and 240.13a-13] by knowingly providing substantial assistance to an issuer which has  
 13 a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or  
 14 Section 15(d) of the Exchange Act [15 U.S.C. § 78o] in failing to file with the Commission such  
 15 accurate and complete information, reports, and documents as are required to be filed with the  
 16 Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and the  
 17 Commission's rules thereunder, including but not limited to, quarterly reports on Form 10-Q  
 18 [17 C.F.R. § 249.308] as prescribed by Commission Rule 13a-1 [17 C.F.R. § 240.13a-13], current  
 19 reports on Form 8-K [17 C.F.R. § 249.308] as prescribed by Commission Rule 13a-11 [17 C.F.R.  
 20 § 240.13a-11], and annual reports on Form 10-K [17 C.F.R. § 249.308] as prescribed by  
 21 Commission Rule 13a-1 [17 C.F.R. § 240.13a-1], such information and documents to contain, in  
 22 addition to such information as is expressly required to be included in a statement or report to the  
 23 Commission, such further material information, if any, as may be necessary to make the required  
 24 statements, in the light of the circumstances under which they are made, not misleading, as  
 25 prescribed by Commission Rule 12b-20 [17 C.F.R. § 240.12b-20].

26 III.

27 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and  
 28 Defendant's agents, servants, employees, attorneys, and all persons in active concert or

1 participation with any of them, who receive actual notice of this Final Judgment, by personal  
 2 service or otherwise, and each of them, are permanently enjoined and restrained from aiding and  
 3 abetting any violation of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] by  
 4 knowingly providing substantial assistance to any issuer which has a class of securities registered  
 5 pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or Section 15(d) of the Exchange  
 6 Act [15 U.S.C. § 78o] in failing to make or keep books, records or accounts, which, in reasonable  
 7 detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.

8                          IV.  
 9

10 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and  
 11 Defendant's agents, servants, employees, attorneys, and all persons in active concert or  
 12 participation with any of them, who receive actual notice of this Final Judgment, by personal  
 13 service or otherwise, and each of them, are permanently enjoined and restrained from aiding and  
 14 abetting any violation of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)] by  
 15 knowingly providing substantial assistance to any issuer which has a class of securities registered  
 16 pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or Section 15(d) of the Exchange  
 17 Act [15 U.S.C. § 78o] in failing to devise and maintain a system of internal accounting controls  
 sufficient to provide reasonable assurances that:

- 18        A.      transactions are executed in accordance with management's general or specific  
 19 authorization;
- 20        B.      transactions are recorded as necessary (i) to permit preparation of financial  
 21 statements in conformity with generally accepted accounting principles or any other criteria  
 22 applicable to such statements, and (ii) to maintain accountability for assets;
- 23        C.      access to assets is permitted only in accordance with management's general or  
 24 specific authorization; and
- 25        D.      the recorded accountability for assets is compared with the existing assets at  
 26 reasonable intervals and appropriate action is taken with respect to any differences.

1 V.  
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3 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and  
4 Defendant's agents, servants, employees, attorneys, and all persons in active concert or  
5 participation with any of them, who receive actual notice of this Final Judgment, by personal  
6 service or otherwise, and each of them, are permanently restrained and enjoined from violating  
7 Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Rule 14a-9 promulgated thereunder  
8 [17 C.F.R. § 240.14a-9] by making or causing to be made solicitations by means of a proxy  
9 statement, form of proxy, notice of meeting, or other communication, written or oral, containing a  
10 statement which, at the time and in the light of the circumstances under which it was made, was  
11 false or misleading with respect to any material fact, or which omitted to state any material fact  
12 necessary in order to make the statements therein not false or misleading or necessary to correct  
13 any statement in any earlier communication with respect to the solicitation of a proxy for the same  
meeting or subject matter which has become false or misleading.

14 VI.  
15

16 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for  
disgorgement of \$536,692, representing profits gained as a result of the conduct alleged in the  
Complaint, together with prejudgment interest thereon in the amount of \$115,989. Defendant  
shall satisfy this obligation by paying \$652,681 within ten (10) business days after entry of this  
Final Judgment by certified check, bank cashier's check, or United States postal money order  
payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to  
the Office of Financial Management, Securities and Exchange Commission, Operations Center,  
6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia, 22312, and shall be accompanied  
by a letter identifying John F. Gifford as a defendant in this action; setting forth the title and civil  
action number of this action and the name of this Court; and specifying that payment is made  
pursuant to this Final Judgment. Defendant shall simultaneously transmit photocopies of such  
payment and letter to the attention of Marc J. Fagel, Associate Regional Director, San Francisco  
Regional Office, United States Securities and Exchange Commission, 44 Montgomery Street,  
Suite 2600, San Francisco, California, 94104. Defendant shall pay post-judgment interest on any

1 delinquent amounts pursuant to 28 U.S.C. § 1961. The Commission shall remit the funds paid  
2 pursuant to this paragraph to the United States Treasury.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay a civil penalty in the amount of \$150,000 pursuant to Section 20(d) of the Securities Act and Section 21 (a) of the Exchange Act. Defendant shall make this payment within ten (10) business days after entry of this Final Judgment by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia, 22312, and shall be accompanied by a letter identifying John. F. Gifford as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. A copy of the cover letter and money order or check shall be sent to Marc J. Fagel, Associate Regional Director, San Francisco Regional Office, United States Securities and Exchange Commission, 44 Montgomery Street, Suite 2600, San Francisco, California 94104. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961. The Commission shall remit the funds paid pursuant to this paragraph to the United States Treasury.

VIII.

20 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is  
21 incorporated herein with the same force and effect as if fully set forth herein, and that Defendant  
22 shall comply with all of the undertakings and agreements set forth therein.

IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

x

27 There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil  
28 Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

1 PRESENTED BY:

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4 Helane L. Morrison /*ss*

5 Marc J. Fagel

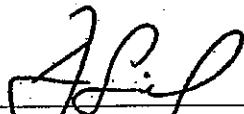
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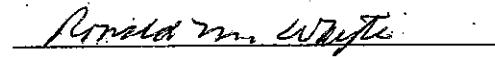
16 APPROVED AS TO FORM:

17 

18 David Siegel, Esq.  
19 Irell & Manella LLP  
20 1800 Ave of the Stars, Suite 900  
21 Los Angeles, CA 90067  
22 Telephone: (310) 277-1010  
23 Fax: (310) 203-7199

24 ATTORNEY FOR DEFENDANT JOHN F. GIFFORD

25 Dated this 23 day of January, 2007

26   
27 UNITED STATES DISTRICT JUDGE

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